

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 581 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMAL HASANBHAI SANGHI

Versus

STATE OF GUJARAT

Appearance:

MR ZUBIN F BHARDA for Petitioner

MR SJ DAVE, APP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/09/97

ORAL JUDGEMENT

1. The petitioner, an externee under the impugned order dated 30/9/1996 (Annexure : A) passed by Respondent No. 2, has preferred this petition challenging the said order as well as the Appellate order dated 12/2/1997 (Annexure : C) passed by respondent No.4 on number of grounds, inter alia, on the ground appearing in Ground no. 4 of the petition.

2. The said ground speaks about taking into consideration the offences alleged to have been committed by the petitioner during the year 1988 and 1993, whereas the impugned order has been passed on 30/9/1996, that is to say after a passage of around 3 years, snapping the live link between the alleged prejudicial activities of the petitioner and the need to extern the petitioner from the particular localities.

3. Rule was made returnable on 27/8/1997. The matter has come up for hearing today. No Affidavit in Reply has been filed by the respondents. In my opinion the ground of challenge against the impugned order of externment will hold good on a bare look at the order of externment itself. It may be seen that three offences of 1988 registered in Pragati Nagar Police Station have first been referred to in the table of offences relied upon by the externing authority. Then there is one offence of 1992 registered in the said police station referred to by the externing authority. Finally three offences of 1993 registered in the said police station have been referred to. There is no material of registered offences for the whole of the year 1994 and for the whole of the year 1995. The show cause notice has been issued on 29/3/1996 and the impugned order of externment has been passed on 30/9/1996, even that is also at a belated point of time, after a passage of around six months. In my opinion, the order of externment has been passed after a long lapse of time since the date of last registered offence and even since the date of show cause notice. It will have, therefore, to be held that live link between the past acts and the order of externment has obviously been snapped by passage of time. The impugned order of externment, therefore, would stand vitiated both on the ground of stale instances and delay in passing the order.

In the result, in view of what is stated above and in the facts of the case, this Special Criminal Application is required to be allowed. The impugned order of externment dated 30/9/1996 and the order of confirmation passed in Appeal by the Appellate Authority on 12/2/1997 are hereby quashed and set aside. Rule made absolute accordingly.

* * *